



## **INTERNATIONAL TRADE COMMISSION**

**[Investigation No. 337-TA-907]**

### **Certain Vision-Based Driver Assistance System Cameras, Components Thereof, and Products Containing the Same: Commission's Determination to Review-in-Part a Final Initial Determination Finding no Violation of Section 337; Request for Written Submissions; Extension of the Target Date**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in-part the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on April 27, 2015, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the above-captioned investigation. The Commission also extends the target date to October 8, 2015.

**FOR FURTHER INFORMATION CONTACT:** Amanda P. Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that

information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on January 28, 2014, based on a complaint filed by Magna Electronics Inc. of Auburn Hills, Michigan. *See 79 Fed. Reg.* 4490-91 (Jan. 28, 2014). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §1337 (“section 337”), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vision-based driver assistance system cameras and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,116,929 (“the ’929 patent”) and 8,593,521 (“the ’521 patent”). The complaint further alleges the existence of a domestic industry. Subsequently, the complaint and notice of investigation were amended by adding U.S. Patent Nos. 8,686,840 (“the ’840 patent”) and 8,692,659 (“the ’659 patent”), and by terminating the investigation in part as to all claims of the ’521 patent. The ’929 patent was later terminated from the investigation. The respondent named in the Commission’s notice of investigation is TRW Automotive U.S., LLC of Livonia, Michigan (“TRW”). The Office of Unfair Import Investigations (“OUII”) was also named a party in the investigation.

On April 27, 2015, the ALJ issued his final ID. The ALJ found that no violation of section 337 has occurred. Specifically, the ALJ found that the ’659 and ’840 patents were not indirectly infringed, that the ’840 patent is invalid, and that the domestic industry requirement for the ’840 patent has not been met. The ALJ also issued his recommendation on remedy and bonding.

On May 11, 2015, Magna and TRW each filed petitions for review. On May 19,

2015, the parties, including OUII, filed responses to the respective petitions for review. On May 28, 2015, Magna filed a corrected response. The Commission has determined to review the ALJ's findings with respect to: (1) importation; (2) whether the asserted claims of the '659 patent require a camera; (3) direct infringement of the '659 patent; (4) induced infringement of the '659 and '840 patents; (5) contributory infringement of the '659 and '840 patents; (6) whether the '659 patent satisfies the requirements of 35 U.S.C. §112; (7) anticipation of the '659 patent claims based on Rayner; (8) anticipation of the '659 patent claims based on Batavia; (9) anticipation of the '659 patent claims based on the SafeTrac Prototype; (10) obviousness of the '659 patent based on Rayner in combination with Blank; (11) obviousness of the '659 patent based on Batavia, the SafeTrac Prototype, and the Navlab 1997 Demo; (12) whether the claims are invalid under the America Invents Act §33(a); and (13) the technical prong of domestic industry for the '659 and '840 patents. The Commission has amended the scope of the investigation to conform to the pleadings of the parties as the ID found.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is interested in only responses to the following questions:

1. Please provide a legal analysis discussing the relevant evidence concerning whether the alleged importation(s), sale for importation, or sale within the United States after importation meets the statutory requirements for finding a violation of section 337 (*i.e.*, do the alleged importations, sales for importation, or sales in the United States after importation by TRW satisfy 19 U.S.C. §1337(a)(1)(B)). Please discuss

any relevant case law including Commission precedent. Include in your discussion an analysis for each of the accused products.

2. Please discuss any intrinsic evidence, including the unasserted claims, file history, or related patents and applications (and prosecution histories thereof) that would guide one of ordinary skill in the art in determining whether the asserted claims of the '659 patent require a camera. Include in your discussion any relevant case law (*e.g.*, case law pertaining to construction of “configured to” limitations).
3. In making his direct infringement finding for the '659 patent, the ALJ cited several non-admitted physical exhibits. For each of these citations, please identify whether the physical exhibit was converted into a demonstrative exhibit and identify the corresponding demonstrative exhibit, if any.
4. Discuss whether TRW has indirectly infringed the '659 patent in light of the Supreme Court’s decision in *Commil USA, LLC v. Cisco Sys., Inc.*, 135 S.Ct. 1920 (2015). In your response to this question, please include the following for each of the accused products:
  - (a) An analysis of whether all of the requirements for both induced and contributory infringement are met.
  - (b) Please address if the focus of the analysis for determining whether there are substantial non-infringing uses should be

directed to: (1) the vehicle having the accused accessory mounting system installed, (2) the accused S-Cams, or (3) the Mobileye EyeQ chip. Please discuss (with citations to the record) whether there are substantial non-infringing uses for: (1) the accused S-Cams; and (2) the Mobileye EyeQ chip. Please cite to any relevant case law to support your position.

- (c) Discuss whether Magna must prove that TRW induced infringement of each limitation of the asserted claims before TRW can be held liable for induced infringement.
- (d) Please discuss whether, under the proper legal analysis, the relevant inducing acts must be related to the vehicle, the accused S-Cams, or the Mobileye EyeQ chip. Please cite to any relevant case law to support your position.
- (e) Are TRW's sales to GM that occurred after issuance of the '659 patent, sufficient acts to give rise to induced infringement liability? Please cite the relevant case law and the record evidence.

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6. Should the limitations of “said structure is configured to accommodate a forward facing camera” and “a structure configured for mounting to said plurality of attachment members” of claims 1, and 90 of the ’659 patent be treated as means-plus-function limitations? *See Williamson v. Citrix Online, LLC*, No. 2013-1130, 2015 WL 3687459 (Fed. Cir. June 16, 2015). If these limitations are means-plus-function limitations, please discuss where the structure corresponding to the claimed function is disclosed in the specification.
7. Must every limitation of a claimed invention be disclosed in a single embodiment in the specification to meet the written description requirement? Please address this question in the context of the relevant claims of the ’659 patent and any relevant case law. *See* TRW Petition for Review at 33-39.
8. Did TRW, in its briefing before the ALJ, meet its burden to prove invalidity of the ’659 patent by clear and convincing evidence in arguing a motivation to combine the admitted prior art or Blank with Rayner?
9. Please discuss the record evidence, if any, regarding whether there is a motivation to combine the admitted prior art or Blank with the teachings of Rayner.
10. Did TRW meet its burden, in its briefing before the ALJ, to prove obviousness of the ’659 patent by clear and convincing evidence for the combination of Batavia, SafeTrac, and Navlab 1997 Demo references?

Discuss whether each of the limitations of the asserted claims is met by the Batavia, SafeTrac, and Navlab 1997 Demo references.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

**WRITTEN SUBMISSIONS:** The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainant and OUII are also requested to submit proposed remedial orders for the Commission's consideration.

Complainant is also requested to state the date that the '659 patent expires and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Friday, August 14, 2015. Reply submissions must be filed no later than the close of business on Monday, August 24, 2015. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. The page limit for the parties' initial submissions is 100 pages. The parties reply submissions, if any, are limited to 50 pages.



Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-907") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf)). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission extends the target date to October 8, 2015.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

Issued: July 31, 2015.

Lisa R. Barton,  
Secretary to the Commission

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